wiley

NEWSLETTER

Letter to State Board Seeking Guidance Does Not Constitute Claim

February 2005

The United States District Court for the Northern District of California, applying California law, has held that a letter written by optometrists to their state governing body seeking ethical guidance on the disclosure of patient information by a company insured under an E&O policy does not constitute a "Claim" because it did not make a demand of the company. *LensCrafters, Inc. v. Liberty Mut. Fire Ins. Co.*, 2005 WL 146896 (N.D. Cal. Jan. 20, 2005).

The insurer issued a claims-made E&O policy to the company. The policy defined a "Claim" as "any written notice received by an Insured that a person or entity intends to hold an Insured responsible for a Wrongful Act." The policy also deemed "Related Claims" to be a "single Claim . . . deemed to have been first made" when "the earliest Claim within the Related Claims was received by an Insured" or when "written notice was first given to the Underwriter of a Wrongful Act which subsequently gave rise to any of the Related Claims," whichever is earlier.

The underlying claimants filed a lawsuit against the company alleging that the company violated their privacy rights by placing representatives into examination rooms while licensed optometrists associated with the company performed eye exams. The company's representatives allegedly collected confidential medical information regarding claimants' conditions and used that information to market its products to claimants. Claimants alleged this behavior violated the California Confidentiality of Medical Information Act, which states that "[n]o provider of health care, health care services plan, or contractor shall disclose medical information regarding a patient . . . without first obtaining an authorization."

The E&O insurer disclaimed coverage because, eight months prior to the date on which the claimants filed the underlying lawsuit, some of the optometrists wrote a letter to the state governing board seeking ethical guidance regarding the company's practice of placing representatives in exam rooms. The insurer argued that this letter constituted a Related Claim to the underlying lawsuit. Because that letter was written during the policy period of a prior E&O policy issued by the insurer, the insurer argued that the company violated the prior policy's requirement that notice of claims be given "in no event later than . . . ninety (90) days after the end of the Policy Period" by not notifying it until the lawsuit was filed during a subsequent policy period.

The district court rejected the insurer's argument and held that the optometrists' letter was not a "Claim" under the E&O policy. The court reasoned that the letter was not addressed to the company and did not demand that the company take any corrective action or pay any damages. Opining that the ordinary meaning of "Claim" is "the assertion of a right or demand for money," the court concluded that the optometrists' letter was not a "Claim" under the policy language, and therefore not a "Related Claim" with respect to the lawsuit. The court held that the company was entitled to a defense under the E&O insurer's subsequent policy period, during which the company gave timely notice of the lawsuit against it.